

FB EXHIBIT D

From: Anne Davis <adavis@bfalaw.com>
Sent: Friday, January 17, 2020 8:52 AM
To: Kutscher Clark, Martie <MKutscherClark@gibsondunn.com>; Lipshutz, Joshua S. <JLipshutz@gibsondunn.com>; Watkins, Alison <AWatkins@gibsondunn.com>; Swanson, Alexander <ASwanson@gibsondunn.com>
Cc: Derek Loeser <dloeser@kellerrohrback.com>; Cari Laufenberg <clauenberg@kellerrohrback.com>; Benjamin Gould <bgould@kellerrohrback.com>; Sara Simnowitz <ssimnowitz@bfalaw.com>; Lesley Weaver <lweaver@bfalaw.com>; Matthew Montgomery <mmontgomery@bfalaw.com>
Subject: RE: In re: Facebook, Inc. Consumer Privacy User Profile Litigation, No. 18-md-02843

[External Email]

Martie,

It is premature to schedule plaintiffs' depositions until Facebook produces the responsive documents it possesses regarding those same plaintiffs. This necessarily entails a fulsome discussion of ESI and what kinds of documents Facebook possesses regarding the plaintiffs. Facebook has not provided any meaningful information regarding documents and ESI that it possesses. With regard to your proposal, two weeks is not sufficient time to bring a motion to compel and have the court rule before a deposition.

We can discuss when and where depositions will occur once we receive the documents relating to those plaintiffs. To date, we have received none.

Regards,

Anne

Anne Davis

BLEICHMAR FONTI & AULD LLP
555 12th St., Suite 1600, Oakland, CA 94607
415.445.4016 | adavis@bfalaw.com

From: Kutscher Clark, Martie <MKutscherClark@gibsondunn.com>
Sent: Thursday, January 16, 2020 5:23 PM
To: Anne Davis <adavis@bfalaw.com>; Lipshutz, Joshua S. <JLipshutz@gibsondunn.com>; Watkins, Alison <AWatkins@gibsondunn.com>; Swanson, Alexander <ASwanson@gibsondunn.com>
Cc: Derek Loeser <dloeser@kellerrohrback.com>; Cari Laufenberg <clauenberg@kellerrohrback.com>; Benjamin Gould <bgould@kellerrohrback.com>; Sara Simnowitz <ssimnowitz@bfalaw.com>; Lesley Weaver <lweaver@bfalaw.com>; Matthew Montgomery <mmontgomery@bfalaw.com>
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Anne,

Thank you for your email. As you suggest, scheduling the depositions of more than 20 plaintiffs will be complicated and take some time. We disagree that the parties cannot begin this conversation before they have agreed to the scope and details of ESI discovery. Custodians, search terms, privilege review, and other ESI issues have no bearing on where and when the plaintiffs are deposed, and we are aware of no authority that requires resolution of all document discovery issues before any depositions can proceed. To alleviate any concerns you may have about your ability to sufficiently review documents in advance of the plaintiffs' depositions, Facebook agrees to produce any Facebook documents it intends to use at each plaintiff's deposition at least two weeks in advance of the deposition.

You separately requested that we detail the scheduling issues we would like to discuss tomorrow. First, we would like to assure Plaintiffs that Facebook does not intend to require all plaintiffs to travel to the Northern District of California for their depositions. Rather, in order to minimize travel for all parties, we propose that the parties agree to several deposition hubs located across the country and that each plaintiff select one of these hubs for his or her deposition. We are flexible about these locations. Our hope is that this proposal will allow the parties to group together depositions that will occur in the same location to minimize everyone's travel. Second, we would like to discuss the general timing of the depositions, which we hope to begin in approximately 30 days. Given that it may take some time for the parties to arrange deposition locations throughout the country, we propose that we depose plaintiffs residing in California first (in mid to late February). We can be flexible about the location of these in-state depositions.

We look forward to speaking with you tomorrow at 2:00 p.m.

Best,
Martie

Martie Kutscher Clark

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1881 Page Mill Road, Palo Alto, CA 94304-1211
Tel +1 650.849.5348 • Fax +1 650.849.5048
MKutscherClark@gibsondunn.com • www.gibsondunn.com

From: Anne Davis <adavis@bfalaw.com>
Sent: Thursday, January 16, 2020 2:17 PM
To: Kutscher Clark, Martie <MKutscherClark@gibsondunn.com>; Lipshutz, Joshua S. <JLipshutz@gibsondunn.com>; Watkins, Alison <AWatkins@gibsondunn.com>
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Martie,

Thank you for confirming Facebook's availability on Tuesday and Friday of next week. Let's set aside Tuesday at 10am. We've already sent an invitation for Friday next and anticipate receiving your revised Schedule A protocol no later than Wednesday.

Regarding your request to discuss Plaintiff depositions during our upcoming meet and confers, the parties cannot meaningfully engage in deposition scheduling until the parties reach agreement on the scope of electronic discovery in this action. This necessarily includes resolution of ESI matters, including custodians and search terms, as well as the timing and scope of privilege review.

Further, the parties have yet to come to a mutual understanding of the scope of production in connection with Plaintiffs' RFPs seeking information from Facebook on the named plaintiffs, excluding those withdrawn, as well as the timing and volume of that production.

Nonetheless, with an eye toward making progress, if Facebook wishes to begin this discussion, and in keeping with Facebook's own processes in this case, Plaintiffs ask that Facebook provide a detailed letter ahead of any meet and confer expressly identifying what Facebook seeks to discuss so that counsel can be prepared to engage substantively on the issues Facebook seeks to address. We can then be prepared to raise these issues with our more than 20 plaintiffs ahead of any such discussion.

Regards,

Anne Davis

BLEICHMAR FONTI & AULD LLP
555 12th St., Suite 1600, Oakland, CA 94607
415.445.4016 | adavis@bfalaw.com

From: Kutscher Clark, Martie <MKutscherClark@gibsondunn.com>
Sent: Wednesday, January 15, 2020 2:50 PM
To: Anne Davis <adavis@bfalaw.com>; Lipshutz, Joshua S. <JLipshutz@gibsondunn.com>; Watkins, Alison <AWatkins@gibsondunn.com>
Cc: Derek Loeser <dloeser@kellerrohrback.com>; Cari Laufenberg <claufenberg@kellerrohrback.com>; Benjamin Gould <bgould@kellerrohrback.com>; Sara Simnowitz <ssimnowitz@bfalaw.com>; Lesley Weaver <lweaver@bfalaw.com>
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Anne,

If we need additional time to discuss Plaintiffs' RFPs following the 2 hours already scheduled for this Friday the 17th, we are available next Tuesday, January 21 at 10:00 am PT. In addition to the discussion topics you circulated, on Friday we would also like to discuss scheduling the named Plaintiffs' depositions.

At the end of today's meet and confer regarding ESI issues, you asked if we are available for a follow up ESI discussion next Friday, January 24th at 10:00 am PT. We are available at that time.

Thank you,

Martie Kutscher Clark

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1881 Page Mill Road, Palo Alto, CA 94304-1211
Tel +1 650.849.5348 • Fax +1 650.849.5048
MKutscherClark@gibsondunn.com • www.gibsondunn.com